

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**In re:** §  
**New Procedures for Chapter 7 and** §  
**Chapter 13 Motions for Relief from Stay** §  
**Against Exempt Property** §

**NOTICE**

The Court is considering the adoption of new procedures for motions for relief from the automatic stay against exempt property in chapter 7 and chapter 13 consumer cases. These procedures would only apply to motions for relief from the stay filed by creditors who have deeds of trust against homes or consensual title liens against vehicles. (Thus, the procedures would not apply, for example, to a motion to lift stay filed by a homeowners' association or by a taxing authority or by an automotive repair shop asserting a statutory lien). This Notice sets forth the reasons why the Court is considering new procedures, informs the public about the contemplated procedures, and requests comment with respect to the procedures. A hearing to receive comments will be conducted at **1:00 p.m. on June 29, 2005** in Courtroom 10B of the United States Courthouse in Houston, Texas.

Current practice related to motions to lift stay in consumer cases (especially motions involving exempt vehicles and exempt residential property) usually involves pleadings that contain more boilerplate than cogent information. More importantly, the pleadings frequently do not include important information about payment histories, loan balances, and escrow histories. Often, allegations are confusing or are simply wrong.

There are frequently two or more such motions in each consumer case. The cost of each these motion is typically \$650 for the movant, \$350 for the defense, \$150 for the filing fee, expenses of notice to parties in interest, and possibly more. The cost of these motions, utilizing existing procedures, thus increases the cost of chapter 13 proceedings by thousands of dollars. The vast majority of such motions in chapter 13 cases are resolved by agreed orders or by default.

Proposed agreed orders are frequently submitted to resolve these motions to lift stay. These orders usually contain provisions making fundamental changes to the estate that may conflict with provisions of the Bankruptcy Code. The proposed agreed orders, although containing only the signatures of the debtors' counsel and the creditors' counsel, often purport to bind other parties, such as the chapter 13 trustee or subsequently appointed chapter 7 trustees. In short, the practice of submitting agreed orders to resolve motions for relief from the stay has developed substantially beyond the type of relief suggested in the Bankruptcy Code.

These proposed procedures are intended to provide more meaningful motions and responses and more appropriately limited agreed orders, while reducing the cost of the process.

Attached are proposed procedures that are intended to improve this Court's administration of stay matters. Also attached is a proposed uniform motion for relief from the stay along with uniform proposed orders.

Signed on June 14, 2005.

  
\_\_\_\_\_  
**Marvin Isgur**  
**UNITED STATES BANKRUPTCY JUDGE**

**Wesley W. Steen**  
**UNITED STATES BANKRUPTCY JUDGE**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	§
New Procedures for Chapter 7 and Chapter 13	§
Motions for Relief from Stay Against Exempt	§
Property	§

**PROPOSED PROCEDURES FOR  
CONSUMER MOTIONS FOR RELIEF FROM AUTOMATIC STAY**

1. **Procedures are Mandated.** Parties who file motions for relief from the stay on exempt residences and exempt vehicles in chapter 7 and chapter 13 cases (“Consumer Lift Stay Motions”) must comply with these procedures and must use the sample forms promulgated by the Court from time to time.

2. **Variances.** Variance from these procedures is allowed, if exceptional circumstances exist.

A. Exceptional circumstances include:

1. A motion for relief from the stay filed against a repeat filer for which the movant seeks relief other than a routine termination of the stay, and
2. A motion on which there are disputes regarding the extent, validity, or priority of liens on the collateral that is the subject of the motion.

B. A party believing that are other exceptional circumstances justifying exemption from these procedures must allege the exceptional circumstances with particularity in the motion.

3. **Must Confer Before Filing Motion.** Prior to filing a Consumer Lift Stay, the movant must attempt to contact the debtor(s)’ counsel to discuss whether an agreement can be reached utilizing the Court’s agreed order forms. If such an agreement can be reached, the parties may submit a Motion for Entry of Agreed Order under FRBP 4001. Submission of an order under such circumstances avoids the expense of preparing a motion for relief, the filing fee for a motion for relief, the expense of filing a response to the motion, and the expense of attending a hearing.

4. **Responses.** If the parties cannot reach agreement to submit an agreed order in the Court’s format, the party seeking relief from the stay may file a Consumer Lift Stay Motion in the Court’s format. Responses must be one of the following and must be filed at least five days before the hearing:

A. Submission of an agreed order terminating the stay, utilizing the Court’s form. If an agreed order is filed in accordance with these procedures, the Court will usually issue

the order prior to the hearing. Attendance at the originally scheduled hearing is not necessary, by either party. If the Court declines to issue the order, the Court will issue an order for further proceedings.

B. Submission of an agreed order conditioning the stay, utilizing the Court's form. If an agreed order is filed in accordance with these procedures, the Court will usually issue the order prior to the hearing. Attendance at the originally scheduled hearing is not necessary, by either party. If the Court declines to issue the order, the Court will issue an order for further proceedings.

C. An answer or other response. Answers must comply with FRBP 9011. Responses must be based on reasonable investigation and must not be filed for delay or other improper purpose. A response stating that the debtor(s)' attorney has not been able to contact the debtor(s) or a general denial not based on reasonable investigation is not a sufficient response. Attendance at the hearing by both parties is required.

5. **Default May be Granted.** If a sufficient response has not been timely filed, the movant must submit a proposed form of default order with a certification of default. The proposed form of default order and certification must comply with the Court's form as promulgated from time to time. The Court may issue a default order if an adequate response is not filed at least five days before the hearing.

6. **Implementation.** These procedures and forms are mandatory for all motions filed after September 1, 2005. They may be used at any time prior to that.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

§  
§

Case No.  
(Chapter \_\_)

**MOTION FOR ENTRY OF AGREED ORDER CONDITIONING AUTOMATIC STAY  
REGARDING EXEMPT PROPERTY**

**THIS IS A MOTION FOR ENTRY OF AN AGREED ORDER CONDITIONING THE AUTOMATIC STAY. IF YOU OBJECT TO THE GRANTING OF RELIEF, YOU SHOULD CONTACT THE MOVANT IMMEDIATELY TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A WRITTEN RESPONSE AND SEND A COPY TO MOVANT WITHIN 15 DAYS OF THE DATE THIS WAS MAILED TO YOU. IF NO TIMELY OPPOSITION IS FILED, THE COURT MAY GRANT THE RELIEF WITHOUT A HEARING.**

1. Movant: \_\_\_\_\_
2. Movant holds a security interest in the property on exhibit "A".
3. Type of collateral (Single Family Home, Manufactured Home, Car, Truck, Motorcycle): \_\_\_\_\_
4. Estimated value of property: \$ \_\_\_\_\_.
5. Total amount owed to movant: \$ \_\_\_\_\_.
6. Estimated equity (paragraph 3 minus paragraph 4): \$ \_\_\_\_\_.
7. Total pre and post-petition arrearages: \$ \_\_\_\_\_.
8. Total post-petition arrearages: \$ \_\_\_\_\_.
9. Amount of unpaid, past due property taxes, if applicable: \$ \_\_\_\_\_.
10. Expiration date on insurance policy, if applicable: \_\_\_\_\_.
11. Movant and Debtor have agreed to condition the automatic stay pursuant to the terms of the attached agreed order. Accordingly, the parties request entry of the agreed order.

Date: \_\_\_\_\_

\_\_\_\_\_  
Movant's counsel

**Certificate of Service**

A copy of this motion was served on the persons shown on exhibit "B" at the addresses reflected on that exhibit on [date] by prepaid United States first class mail.

\_\_\_\_\_  
Movant's counsel

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:

§  
§

Case No.  
(Chapter \_\_)

**MOTION FOR RELIEF FROM THE STAY REGARDING EXEMPT PROPERTY**

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. THE COURT WILL CONDUCT A HEARING ON THIS MOTION ON [DATE] AT [TIME] IN COURTROOM [ADDRESS]. IF YOU OBJECT TO THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY, YOU SHOULD CONTACT THE MOVANT IMMEDIATELY TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A WRITTEN RESPONSE AND SEND A COPY TO MOVANT AT LEAST FIVE BUSINESS DAYS PRIOR TO THE HEARING AND YOU MUST ATTEND THE HEARING. THE COPY SENT TO THE MOVANT MUST BE DELIVERED BY HAND OR ELECTRONIC DELIVERY IF IT IS SENT LESS THAN FIVE BUSINESS DAYS PRIOR TO THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE HEARING MAY BE AN EVIDENTIARY HEARING AND THE COURT MAY GRANT OR DENY RELIEF FROM THE STAY BASED ON THE EVIDENCE PRESENTED AT THIS HEARING.

1. Movant: \_\_\_\_\_
2. Movant holds a security interest in the property on exhibit "A".
3. Type of collateral (Single Family Home, Manufactured Home, Car, Truck, Motorcycle): \_\_\_\_\_
4. Estimated value of property: \$ \_\_\_\_\_.
5. Total amount owed to movant: \$ \_\_\_\_\_.
6. Estimated equity (paragraph 3 minus paragraph 4): \$ \_\_\_\_\_.
7. Total pre and post-petition arrearages: \$ \_\_\_\_\_.
8. Total post-petition arrearages: \$ \_\_\_\_\_.
9. Amount of unpaid, past due property taxes, if applicable: \$ \_\_\_\_\_.
10. Expiration date on insurance policy, if applicable: \_\_\_\_\_.
11. Debtor(s)' payment history is attached as exhibit "B".
12. Based on the foregoing, movant seeks termination of the automatic stay to allow movant to foreclose or reposses the debtor(s)' property and seeks to recover its costs and attorneys' fees in an amount not to exceed the amount listed in paragraph 6.
13. Movant certifies that prior to filing this motion an attempt was made to confer with the Debtor(s)' counsel (or with Debtor(s), if *pro se*) by the following person on the following date and time: \_\_\_\_\_

\_\_\_\_\_.

An agreement could not be reached.

Date: \_\_\_\_\_

\_\_\_\_\_  
Movant's counsel

**Certificate of Service**

A copy of this motion was served on the persons shown on exhibit "C" at the addresses reflected on that exhibit on [date] by prepaid United States first class mail.

\_\_\_\_\_  
Movant's Counsel

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**In re:**

§  
§

**Case No.**  
**(Chapter \_\_)**

**ORDER GRANTING RELIEF FROM AUTOMATIC STAY AFTER HEARING  
[FORM SUBMITTED WITH ORIGINAL MOTION AND BROUGHT TO HEARING]**

\_\_\_\_\_ (“Movant”) filed a motion for relief from the automatic stay against the property described on exhibit “A”. Movant represented to the Court that it had served the motion in accordance with all applicable rules and provided notice of the hearing.

\_\_\_\_\_ Although a response opposing the motion was filed, the respondent did not appear at the hearing. Therefore, the response is struck for want of prosecution and the motion is granted.

\_\_\_\_\_ After hearing, and for the reasons stated on the record, relief from the stay is granted.

\_\_\_\_\_ No timely response was filed and the motion. The motion is granted by default.

\_\_\_\_\_ As shown by Debtor(s)’ counsel signature below, Debtor(s) have agreed to the requested relief.

Accordingly, it is ordered that Movant is granted relief from the automatic stay to pursue its state law remedies against the property described on exhibit “A”, including foreclosure, repossession and/or eviction.

Additional rulings:

\_\_\_\_\_ Movant is awarded attorneys fees in the amount of \$\_\_\_\_\_.

\_\_\_\_\_ The stay imposed by Bankruptcy Rule 4001(a)(3) does not apply for the reasons stated on the record.

**Date:** \_\_\_\_\_

**UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**In re:**

§  
§

**Case No.  
(Chapter \_\_)**

**AGREED ORDER GRANTING RELIEF FROM AUTOMATIC STAY**

\_\_\_\_\_ (“Movant”) filed a motion for relief from the automatic stay against the property described on exhibit “A”. Movant represented to the Court that it had served the motion in accordance with all applicable rules and provided notice of the hearing. As shown by Debtor(s)’ or Debtor(s)’ counsel signature below, Debtor(s) have agreed to the requested relief.

Accordingly, it is ordered that Movant is granted leave from the automatic stay to pursue its state law remedies against the property described on exhibit “A”, including repossession, foreclosure and/or eviction.

[OPTIONAL: The stay imposed by Bankruptcy Rule 4001(a)(3) does not apply.]

Reserved for Judge Signature

Agreed:

\_\_\_\_\_  
DEBTOR(S) OR THEIR COUNSEL

Date: \_\_\_\_\_

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**In re:**

§  
§

**Case No.**  
**(Chapter \_\_)**

**DEFAULT ORDER GRANTING RELIEF FROM AUTOMATIC STAY**

**(This Order Resolves doc. #\_\_\_\_\_)**

**[FORM TO BE FILED AT LAST TWO BUSINESS DAYS BEFORE THE  
SCHEDULED HEARING IF NO RESPONSE HAS BEEN FILED]**

\_\_\_\_\_ (“Movant”) filed a motion for relief from the automatic stay against the property described on exhibit “A”. Movant represented to the Court that it had served the motion in accordance with all applicable rules and provided notice of the hearing. As certified by Movant’s counsel, no timely response has been filed. The Court grants default relief.

Accordingly, it is ordered that Movant is granted relief from the automatic stay to pursue its state law remedies, including foreclosure, repossession and/or with respect to the property described on exhibit “A”.

Reserved for Judge Signature

**Movant’s counsel’s certification:**

Movant’s motion for relief from the stay was served in accordance with applicable bankruptcy rules on \_\_\_\_\_. I have not received an answer to the motion. Additionally, I have reviewed the docket sheet in this case. The docket sheet reflects that no answer was filed to Movant’s motion for relief from the stay.

\_\_\_\_\_  
**COUNSEL FOR MOVANT**

**Date:** \_\_\_\_\_



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

§  
§

Case No.  
(Chapter 13)

**CHAPTER 13  
AGREED ORDER CONDITIONING AUTOMATIC STAY (HOME)  
(This Order resolves docket #\_\_\_\_\_)**

1. This Order concerns the note that is secured by the Debtor(s)' home and that is held by \_\_\_\_\_ "Movant". The legal description of the home is attached as exhibit "A". Payments due to Movant must be sent to the address on exhibit "B".

2. *By signing below, the Debtor(s) represent to the Court that the Debtor(s):*

*A. Are current on all payments to the chapter 13 trustee.*

*B. If they are a salaried or wage employee, are currently operating under a wage order or have submitted all information to the chapter 13 trustee for the presentation of a wage order to the Court.*

*C. If they are not a salaried or wage employee, are currently operating under an automated clearinghouse order or have submitted all information to the chapter 13 trustee for the presentation of an automated clearinghouse order to the Court.*

3. The parties have stipulated that unpaid amounts due post-petition total \$\_\_\_\_\_ and that Movant should be awarded attorneys fees and costs in the amount of \$\_\_\_\_\_ (not to exceed \$650.00), for a total post-petition amount owed of \$\_\_\_\_\_. Within 30 days of entry of this Order, the Debtor(s) must file a proposed modification of any confirmed plan or must amend any proposed plan to include this amount, with interest at an annual rate of \_\_\_\_%. If the Debtors fail to do so, it is a default under this Order.

4. The Debtor(s) must:

A. Timely make all regular payments to Movant that come due after entry of this Order.

B. Maintain insurance on the property and provide continuous proof of insurance to the holder of the note.

C. Make all payments due to the chapter 13 trustee after the date of this Order.

D. Pending approval of the modification or amended plan, make additional payments to the trustee of not less than 3% per month of the total post-petition amount reflect in paragraph 3.

5. If the Debtor(s) fail to comply with paragraphs 3 or 4 of this Order or make a payment by insufficient check, the movant must give the Debtor(s) written notice by regular and by certified mail. If the Debtor(s) fail to comply within 10 days of the date that notice was sent, it is a default under this Order. The Movant may impose a charge of \$35.00 for each notice that is required to be sent under this paragraph.

6. The automatic stay remains in effect until (i) there is a default under paragraph 5; (ii) this case is dismissed; or (iii) the Debtor(s) receive their bankruptcy discharge. If the stay terminates because there is a default under paragraph 5, the Movant must file a notice of termination of the automatic stay.

**SO ORDERED:**

Reserved for Judge Signature

AGREED AND ENTRY REQUESTED:

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Debtor(s)' counsel

\_\_\_\_\_  
Movant's counsel

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**In re:**

§  
§

**Case No.  
(Chapter 13)**

**CHAPTER 13  
AGREED ORDER CONDITIONING AUTOMATIC STAY (VEHICLE)  
(This order resolves docket #\_\_\_\_\_)**

1. This Order concerns the note that is secured by the Debtor(s)' vehicle and that is held by \_\_\_\_\_ "Movant". The vehicle is described on "A". Payments due to movant must be sent to the address on exhibit "B".

2. *By signing below, the Debtor(s) represent to the Court that the Debtor(s):*

A. *Are current on all payments to the chapter 13 trustee.*

B. *If they are a salaried or wage employee, are currently operating under a wage order or have submitted all information to the chapter 13 trustee for the presentation of a wage order to the Court.*

C. *If they are not a salaried or wage employee, are currently operating under an automated clearinghouse order or have submitted all information to the chapter 13 trustee for the presentation of an automated clearinghouse order to the Court.*

3. The parties have stipulated that unpaid amounts due post-petition total \$\_\_\_\_\_ and that Movant should be awarded attorneys fees and costs in the amount of \$\_\_\_\_\_ (not to exceed the lesser of \$650.00 or the amount of equity in the vehicle), for a total post-petition amount owed of \$\_\_\_\_\_. Within 30 days of entry of this Order, the Debtor(s) must file a proposed modification of any confirmed plan or must amend any proposed plan to include this amount, with interest at an annual rate of \_\_\_\_%. If the Debtor(s) fail to do so, it is a default under this Order.

4. The Debtor(s) must:

A. Timely make all regular payments to Movant that come due after entry of this Order.

B. Maintain insurance on the property and provide continuous proof of insurance to the holder of the note.

C. Make all payments due to the chapter 13 trustee after the date of this Order.

D. Pending approval of the modification or amended plan, make additional payments to the trustee of not less than 3% per month of the total post-petition amount reflect in paragraph 3.

5. If the Debtor(s) fail to comply with paragraphs 3 or 4 of this Order or make a payment by insufficient check, the Movant must give the Debtor(s) written notice by regular and by certified mail. If the Debtor(s) fail to comply within 10 days of the date that notice was sent, it is a default under this Order. The Movant may impose a charge of \$35.00 for each notice that is required to be sent under this paragraph.

6. The automatic stay remains in effect until (i) there is a default under paragraph 5; (ii) this case is dismissed; or (iii) the Debtor(s) receive their bankruptcy discharge. If the stay terminates because there is a default under paragraph 5, the Movant must file a notice of termination of the automatic stay.

**SO ORDERED:**

Reserved for Judge Signature

**AGREED AND ENTRY REQUESTED:**

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Debtor(s)' counsel

\_\_\_\_\_  
Movant's counsel

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

§  
§

Case No.  
(Chapter 7)

**CHAPTER 7  
AGREED ORDER CONDITIONING AUTOMATIC STAY**

1. This Order concerns the note that is secured by a security interest in the Debtor(s)' property and that is held by \_\_\_\_\_ ("Movant"). The property is described on exhibit "A". Payments due to Movant must be sent to the address on exhibit "B".

2. The parties have stipulated that unpaid amounts due post-petition total \$\_\_\_\_\_ and that Movant should be awarded attorneys fees and costs in the amount of \$\_\_\_\_\_ (not to exceed the lesser of \$650.00 or the amount of equity in the property), for a total post-petition amount owed of \$\_\_\_\_\_.

3. The Debtors must:

A. Timely make all regular payments to Movant that come due after entry of this Order.

B. Maintain insurance on the property and provide continuous proof of insurance to the holder of the note.

C. Make additional monthly payments of \$\_\_\_\_\_ per \_\_\_\_\_ to the movant as adequate protection payments.

4. The automatic stay remains in effect until (i) there is a default under this Order; (ii) this case is dismissed; or (iii) the Debtor(s) receive their bankruptcy discharge.

5. If the Debtor(s) fail to comply with paragraph 3 of this Order or make a payment by insufficient check, the movant must give the Debtor(s) written notice by regular and by certified mail. If the Debtor(s) fail to comply within 10 days of the date that notice was sent, it is a default under this order. The Movant may impose a charge of \$35.00 for each notice that is required to be sent under this paragraph.

6. This order neither (i) constitutes a reaffirmation agreement under § 524 of the Bankruptcy Code; nor (ii) extends the automatic stay beyond its statutory term

**SO ORDERED:**

Reserved for Judge Signature

AGREED AND ENTRY REQUESTED:

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Debtor(s)' counsel

\_\_\_\_\_  
Movant's counsel